

HOUSE BILL NO. 1255

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BLAND MANLOVE.

2417H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 285, RSMo, by adding thereto seven new sections relating to leave from employment.

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

Section A. Chapter 285, RSMo, is amended by adding thereto seven new sections, to be known as sections 285.400, 285.405, 285.410, 285.415, 285.417, 285.420, and 285.425, to read as follows:

285.400. 1. The provisions of sections 285.400 to 285.425 shall be known and may be cited as the "Missouri Family and Medical Leave Act".

2. As used in sections 285.400 to 285.425, the following terms shall mean:

(1) "Care", includes, but is not limited to, physical care, emotional support, visitation, assistance in treatment, transportation, arranging for a change in care, assistance with essential daily living matters, and personal attendant services;

(2) "Child", a biological, adopted, or foster son or daughter; a stepson or stepdaughter; a legal ward; a son or daughter of a domestic or civil union partner; or the person to whom the employee stands in loco parentis who is under nineteen years of age or nineteen years of age or older but incapable of self-care because of mental or physical impairment;

(3) "Department", the department of labor and industrial relations;

(4) "Director", the director of the department of labor and industrial relations or his or her authorized representative;

(5) "Employer", any person or entity directly or indirectly employing any person for hire, provided that such person or entity employs at least ten employees;

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.

- 17 **(6) "Family and medical leave", any of the following:**
18 **(a) Leave to bond with a child within the first year after the child's birth or**
19 **placement in connection with foster care or adoption;**
20 **(b) Leave to care for a family member who has a serious health condition;**
21 **(c) Leave when the employee is unable to work due to an employee's own serious**
22 **health condition; or**
23 **(d) Leave to participate in activities that are directly related to the educational**
24 **advancement of such employee's child, including, but not limited to, attending parent-**
25 **teacher conferences, interviewing for a new school, responding to an emergency**
26 **involving such employee's child, or attending an athletic or other extracurricular**
27 **activity event in which such child is participating;**
28 **(7) "Family member", a spouse, parent, sibling, or child of the employee;**
29 **(8) "Full-time employee", any person performing work or service of any kind or**
30 **character for hire within the state of Missouri more than thirty hours each week;**
31 **(9) "Health care provider", any physician, hospital, health maintenance**
32 **organization, ambulatory surgical center, long-term care facility, including those**
33 **licensed under chapter 198, dentist, registered or licensed practical nurse, optometrist,**
34 **podiatrist, pharmacist, chiropractor, professional physical therapist, psychologist,**
35 **physician-in-training, and any other person or entity that provides health care**
36 **services under the authority of a license or certificate of this state or any other state**
37 **or foreign country;**
38 **(10) "Parent", a biological, foster, or adoptive parent, a stepparent, or any other**
39 **person who stood in loco parentis to the employee when the employee was a child;**
40 **(11) "Part-time employee", any person performing work or service of any kind**
41 **or character for hire within the state of Missouri thirty or fewer hours each week;**
42 **(12) "Serious health condition", an illness, injury, impairment, or physical or**
43 **mental condition that involves:**
44 **(a) Inpatient care in a hospital, hospice, or residential health care facility;**
45 **(b) Continuing medical treatment; or**
46 **(c) Continuing supervision by a health care provider.**
47
48 **The term shall include medical attention, services, or counseling for victims of stalking,**
49 **domestic violence, or sexual assault, as such terms are defined in section 455.010, or**
50 **victims of trafficking for the purpose of sexual exploitation as described in section**
51 **566.209;**
52 **(13) "Sibling", a person related to another person by blood, adoption, or affinity**
53 **through a common legal or biological parent;**

54 (14) "Spouse", a partner to a lawful marriage.

285.405. 1. (1) Every employer shall provide family and medical leave to each of
2 its employees who have been employed by such employer for at least four weeks as
3 provided in this section.

4 (2) Employees taking family and medical leave shall be compensated at seventy-
5 five percent of the hourly rate at which such employee is paid in the normal course of
6 employment or twelve dollars per hour, whichever is greater.

7 2. (1) Every full-time employee who has been employed by an employer shall be
8 entitled to three hundred twenty hours of family and medical leave.

9 (2) Every part-time employee who has been employed by an employer shall be
10 entitled to four weeks of family and medical leave with the number of hours paid each
11 week being equal to the average of the hours worked over the four weeks prior to taking
12 family and medical leave or twenty-five hours each week, whichever is greater.

13 (3) Nothing in this section shall prevent employees from accruing or using leave
14 under an employer's leave program in addition to leave provided under this section.

15 3. An employee who is entitled to leave under the Family and Medical Leave Act
16 (FMLA) under 29 U.S.C. Section 2601 et seq. shall take Missouri family and medical
17 leave concurrent with leave taken under the FMLA.

18 4. During any period that an employee takes leave under sections 285.400 to
19 285.425, the employer shall maintain coverage for the employee and any family or
20 household member under any group health plan for the duration of such leave at the
21 level and under the conditions coverage would have been provided if the employee had
22 continued in employment for the duration of such leave.

285.410. 1. An employee taking family and medical leave due to the employee's
2 own serious health condition or due to the employee caring for a family member with a
3 serious health condition shall establish medical eligibility for each uninterrupted family
4 and medical leave period by filing the certificate of a health care provider that
5 establishes the serious health condition of the employee or the employee's family
6 member. For subsequent periods of uninterrupted leave after the period covered by the
7 initial certificate or any preceding continued claim, an employee shall file a continued
8 claim for leave supported by the certificate of a health care provider. The certificate
9 form shall be developed by the department.

10 2. In order to establish medical eligibility of the serious health condition of the
11 employee, the information provided in the certificate shall be within the health care
12 provider's knowledge and shall be based on a physical examination and documented
13 medical history of the employee. The certificate shall contain all of the following:

14 **(1) A diagnosis or, if no diagnosis has yet been obtained, a detailed statement of**
15 **symptoms;**

16 **(2) The date, if known, on which the condition commenced;**

17 **(3) The probable duration of the condition; and**

18 **(4) A statement that the serious health condition leaves the employee unable to**
19 **work.**

20 **3. In order to establish medical eligibility of the serious health condition of a**
21 **family member that warrants the care of the employee, the information provided in the**
22 **certificate shall be within the health care provider's knowledge and shall be based on a**
23 **physical examination and documented medical history of the family member. The**
24 **certificate shall contain all of the following:**

25 **(1) A diagnosis or, if no diagnosis has yet been obtained, a detailed statement of**
26 **symptoms;**

27 **(2) The date, if known, on which the condition commenced;**

28 **(3) The probable duration of the condition;**

29 **(4) An estimate of the amount of time that the health care provider believes the**
30 **employee needs to care for the family member; and**

31 **(5) A statement that the serious health condition warrants the participation of**
32 **the employee to provide care for his or her family member.**

33 **4. An employee claiming family and medical leave to bond with a child during**
34 **the first year after the birth or placement of the child in connection with foster care or**
35 **adoption shall establish eligibility documentation as required by the department to**
36 **evidence the birth, adoption, or fostering of a child.**

37 **5. Any employee who obtains care and treatment outside the state shall be**
38 **supported by a certificate of a health care provider duly licensed or certified by the state**
39 **or foreign country in which the employee is receiving the care and treatment.**

285.415. Any employer who fails to comply with the provisions of sections
2 **285.400 to 285.425 shall be liable to the employee affected for the full amount of the**
3 **wage rate and an additional equal amount as liquidated damages, less any amount**
4 **actually paid to the employee by the employer and for costs and such reasonable**
5 **attorney's fees as may be allowed by the court. The employee may bring any legal**
6 **action necessary to collect the claim. All actions brought under this section shall be**
7 **commenced within two years of the accrual of the cause of action.**

285.417. 1. It shall be unlawful for any employer to discharge or in any other
2 **manner discriminate against an employee because the employee has taken family and**
3 **medical leave.**

4 **2. Any employer who violates the provisions of subsection 1 of this section shall**
5 **be liable to any employee employed by such employer who is affected by the violation**
6 **for such equitable relief as may be appropriate, including employment, reinstatement,**
7 **or promotion and for damages equal to the sum of:**

8 **(1) The amount of:**

9 **(a) Any wages, salary, employment benefits, or other compensation denied or**
10 **lost to such employee by reason of the violation; or**

11 **(b) In a case in which wages, salary, employment benefits, or other compensation**
12 **has not been denied or lost to the employee, any actual monetary losses sustained by the**
13 **employee as a direct result of the violation, such as the cost of providing care, up to a**
14 **sum equal to sixty calendar days of wages or salary for the employee;**

15 **(2) The interest on the amount described in subdivision (1) of this subsection**
16 **calculated at a rate of nine percent per annum; and**

17 **(3) An additional amount as liquidated damages equal to the sum of the amount**
18 **described in subdivision (1) of this subsection and the interest described in subdivision**
19 **(2) of this subsection, except that if an employer who has violated subsection 1 of this**
20 **section proves to the satisfaction of the court that the act or omission that violated**
21 **subsection 1 of this section was in good faith and that the employer had reasonable**
22 **grounds for believing that the act or omission was not a violation of subsection 1 of this**
23 **section, such court may, in the discretion of the court, reduce the amount of the liability**
24 **to the amount and interest determined under subdivisions (1) and (2) of this subsection,**
25 **respectively.**

26 **3. An action to recover the damages or equitable relief prescribed in subsection 2**
27 **of this section may be maintained against any employer in any court of competent**
28 **jurisdiction by any individual for and on behalf of the individual or the individual and**
29 **other individuals similarly situated.**

30 **4. The court in any action under this section shall, in addition to any judgment**
31 **awarded to the plaintiff, allow reasonable attorney's fees, expert witness fees, and other**
32 **costs of the action to be paid by the defendant.**

33 **5. The right provided by subsection 3 of this section to bring an action by or on**
34 **behalf of any individual shall terminate:**

35 **(1) On the filing of a complaint by the department in an action under subsection**
36 **8 of this section in which restraint is sought of any further delay in the payment of the**
37 **amount described in subdivision (1) of subsection 2 of this section to such individual by**
38 **the employer responsible under subsection 2 of this section for the payment; or**

39 **(2) On the filing of a complaint by the department in an action under subsection**
40 **6 of this section in which a recovery is sought of the damages described in subdivision**

41 **(1) of subsection 2 of this section owing to an individual by an employer liable under**
42 **subsection 2 of this section unless the action is dismissed without prejudice on motion of**
43 **the department.**

44 **6. The department may bring an action in any court of competent jurisdiction to**
45 **recover the damages described in subsection 2 of this section. Any sums recovered by**
46 **the department shall be held in a special deposit account and shall be paid, on order of**
47 **the department, directly to each individual affected.**

48 **7. An action may be brought under this section not later than three years after**
49 **the date of the last event constituting the alleged violation for which the action is**
50 **brought. An action brought by the department under this section shall be considered to**
51 **be commenced on the date when the complaint is filed.**

52 **8. A circuit court shall have jurisdiction, for cause shown, in an action brought**
53 **by the department to restrain violations of subsection 1 of this section, including the**
54 **restraint of any withholding of payment of wages, salary, employment benefits, or other**
55 **compensation, plus interest, found by the court to be due to an individual, or to award**
56 **such other equitable relief as may be appropriate, including employment, reinstatement,**
57 **and promotion.**

285.420. 1. The department shall develop and implement an outreach program
2 **to ensure that individuals who may be eligible to take family and medical leave under**
3 **sections 285.400 to 285.425 are made aware of such leave. Outreach information shall**
4 **clearly explain eligibility requirements, notice and medical certification requirements,**
5 **nondiscrimination rights, confidentiality, and the relationship between employment**
6 **protection, leave from employment, wage replacement benefits, and other laws and**
7 **employer policies.**

8 **2. Every employer shall post and keep posted, in conspicuous places on the**
9 **premises of the employer where notices to employees are customarily posted, a notice, to**
10 **be prepared or approved by the director, summarizing the requirements of sections**
11 **285.400 to 285.425. The director of the department shall furnish copies of notices and**
12 **summaries of the Missouri family and medical leave program to employers upon**
13 **request, without charge.**

285.425. The department may promulgate all necessary rules and regulations for
2 **the administration of sections 285.400 to 285.425. Any rule or portion of a rule, as that**
3 **term is defined in section 536.010, that is created under the authority delegated in**
4 **sections 285.400 to 285.425 shall become effective only if it complies with and is subject**
5 **to all of the provisions of chapter 536 and, if applicable, section 536.028. This section**
6 **and chapter 536 are nonseverable and if any of the powers vested with the general**
7 **assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove**

8 **and annul a rule are subsequently held unconstitutional, then the grant of rulemaking**
9 **authority and any rule proposed or adopted after August 28, 2023, shall be invalid and**
10 **void.**

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