

HOUSE BILL NO. 1161

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCCREERY.

2246H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 285, RSMo, by adding thereto seven new sections relating to the Missouri family leave act.

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, 285.412, 285.413, 285.414, and 285.415, to read as follows:

285.400. 1. The provisions of sections 285.400 to 285.415 shall be known and may be cited as the “Missouri Family Leave Act”.

2. As used in sections 285.400 to 285.415, 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) “Care provider”, the family member who is providing the required care for a serious health condition or the family member who is bonding with the new child;

(3) “Care recipient”, the family member who is receiving care for a serious health condition or the new child with whom the care provider is bonding;

(4) “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;

(5) “Department”, the department of labor and industrial relations;

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 care leave”, any of the following:**
18 **(a) Leave to bond with a minor child within the first year of the child’s birth or**
19 **placement in connection with foster care or adoption; or**
20 **(b) Leave to care for a family member who has a serious health condition;**
21 **(7) “Family member”, a child, parent, grandparent, grandchild, sibling, spouse,**
22 **domestic or civil union partner, or household member;**
23 **(8) “Grandchild”, a child of the employee’s child;**
24 **(9) “Grandparent”, a parent of the employee’s parent;**
25 **(10) “Health care provider”, an individual duly licensed or certified in the state**
26 **acting within the scope of his or her license or certification who is a dentist, podiatrist, or**
27 **an advanced practice registered nurse;**
28 **(11) “Parent”, a biological, foster, or adoptive parent, a parent-in-law, a stepparent,**
29 **a legal guardian, or other person who stood in loco parentis to the employee when the**
30 **employee was a child;**
31 **(12) “Parent-in-law”, the parent of a spouse or domestic partner;**
32 **(13) “Serious health condition”, an illness, injury, impairment, or physical or**
33 **mental condition that involves inpatient care in a hospital, hospice, or residential health**
34 **care facility, or continuing medical treatment or continuing supervision by a health care**
35 **provider. The term shall include medical attention, services, or counseling for victims of**
36 **stalking, domestic violence, abuse, or trafficking;**
37 **(14) “Sibling”, a person related to another person by blood, adoption, or affinity**
38 **through a common legal or biological parent;**
39 **(15) “Spouse”, a partner to a lawful marriage;**
40 **(16) “Twelve-month period”, with respect to any individual, the three hundred**
41 **sixty-five consecutive days that begin with the first day the individual first establishes a**
42 **valid claim for Missouri family leave benefits;**
43 **(17) “Valid claim”, any claim for Missouri family leave benefits made in accordance**
44 **with the provisions of sections 285.400 to 285.415 and any rules and regulations adopted**
45 **thereunder if the individual claiming benefits is unable to work due to caring for a**
46 **seriously ill family member or bonding with a minor child during the first year after the**
47 **birth or placement of the child in connection with foster care or adoption;**
48 **(18) “Weekly benefit amount”, the amount provided in section 288.038.**

285.405. 1. There is hereby established the “Missouri Family Leave Program” to
2 provide up to six weeks of wage replacement benefits to employees who take time off work
3 to care for a family member with a serious health condition or to bond with a minor child
4 within one year of the birth or placement of the child in connection with foster care or

5 adoption. The department shall administer and implement the Missouri family leave
6 program and the provisions of sections 285.400 to 285.415, and shall pay Missouri family
7 leave benefits as specified in such sections.

8 2. An individual shall be eligible to receive Missouri family leave program benefits
9 equal to one-seventh of his or her weekly benefit amount for each full day during which
10 he or she is unable to work due to caring for a family member with a serious health
11 condition or bonding with a minor child within one year of the birth or placement of the
12 child in connection with foster care or adoption. Individuals shall be subject to a seven-day
13 waiting period during each family care leave period with respect to which waiting period
14 no Missouri family leave benefits shall be payable.

15 3. The maximum amount payable to an individual during any family care leave
16 period for Missouri family leave benefits shall be six times his or her weekly benefit
17 amount, but in no case shall the total amount of benefits payable be more than the total
18 wages paid to the individual during his or her base period. If the benefit is not a multiple
19 of one dollar, it shall be computed to the next higher multiple of one dollar.

20 4. No more than six weeks of Missouri family leave benefits shall be paid within any
21 twelve-month period.

22 5. An individual shall file a claim for Missouri family leave benefits not later than
23 the forty-first consecutive day following the first compensable day with respect to which
24 the claim is made for benefits, which time shall be extended by the department upon a
25 showing of good cause. If a first claim is not complete, the claim form shall be returned to
26 the claimant for completion, and it shall be completed and returned not later than the tenth
27 consecutive day after the date it was mailed by the department to the claimant, except that
28 such time shall be extended by the department upon a showing of good cause.

29 6. No individual shall be eligible for Missouri family leave program benefits with
30 respect to any day:

31 (1) That he or she has received unemployment compensation benefits under chapter
32 288 or under an unemployment compensation act of any other state or of the federal
33 government;

34 (2) Of unemployment and disability for which he or she has received, or is entitled
35 to receive any other benefits under the workers' compensation laws of this state; or

36 (3) That he or she is entitled to receive state disability insurance benefits or under
37 a disability insurance act of any other state or of the federal government.

38 7. An individual who is entitled to leave under the Family and Medical Leave Act
39 (FMLA) under 29 U.S.C. Section 2601 et. seq. shall take Missouri family leave concurrent
40 with leave taken under the FMLA.

41 **8. The first payment of Missouri family leave benefits shall be made to an**
42 **individual within two weeks after the completed claim is received or the family leave began,**
43 **whichever is later, and subsequent payments shall be made biweekly thereafter.**

285.410. 1. A claimant shall establish medical eligibility for each uninterrupted
2 **family care leave period by filing a first claim for benefits supported by the certificate of**
3 **a treating physician or health care provider that establishes the serious health condition**
4 **of the family member that warrants the care of the employee. For subsequent periods of**
5 **uninterrupted leave after the period covered by the initial certificate or any preceding**
6 **continued claim, a claimant shall file a continued claim for those benefits supported by the**
7 **certificate of a treating physician or health care provider.**

8 **2. An employee shall be required to file a certificate to establish eligibility when**
9 **taking leave to care for a family member with a serious health condition. The certificate**
10 **shall be developed by the department. In order to establish medical eligibility of the**
11 **serious health condition of the family member that warrants the care of the employee, the**
12 **information shall be within the physician's or health care provider's knowledge and shall**
13 **be based on a physical examination and documented medical history of the family member**
14 **and shall contain all of the following:**

15 **(1) A diagnosis and diagnostic code prescribed in the International Classification**
16 **of Diseases or, if no diagnosis has yet been obtained, a detailed statement of symptoms;**

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

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

19 **(4) An estimate of the amount of time that the physician or health care provider**
20 **believes the employee needs to care for the family member; and**

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

23 **3. The department shall develop a certificate form for bonding that is separate and**
24 **distinct from the certificate required in subsection 1 of this section for an employee taking**
25 **leave to bond with a minor child within the first year of the child's birth or placement in**
26 **connection with foster care or adoption.**

27 **4. The first and any continuing claim of an individual who obtains care and**
28 **treatment outside the state shall be supported by a certificate of a treating physician or**
29 **health care provider duly licensed or certified by the state or foreign country in which the**
30 **claimant is receiving the care and treatment.**

31 **5. Nothing in this section shall be construed to preclude the department from**
32 **requesting additional medical evidence to supplement the first or any continued claim.**
33 **Any cost incurred for procuring additional medical evidence shall be paid by the employer.**

34 The department may require that the additional evidence include any or all of the
35 following:

36 (1) Identification of diagnoses;

37 (2) Identification of symptoms;

38 (3) A statement setting forth the facts of the family member's serious health
39 condition, which shall be completed by any of the following individuals:

40 (a) The physician or health care provider treating the family member;

41 (b) The registrar, authorized medical officer, or other duly authorized official of
42 the hospital or health care facility treating the family member; or

43 (c) An examining physician or other representative of the department.

285.412. 1. Except as provided in subsection 4 of this section, a person may file a
2 notice of appeal from any determination or redetermination made by the department by
3 mail or in person within thirty days after the date on which a copy of the department's
4 decision was received by the person. Upon receipt of the notice of appeal, the department
5 shall request the assignment of an administrative law judge in accordance with chapters
6 536 and 621 to conduct a hearing and issue a proposed decision and order. The hearing
7 shall be conducted in accordance with chapters 536 and 621.

8 2. The administrative law judge's proposed decision and order shall be final and
9 not subject to further appeal, unless within thirty days after the decision is served on the
10 interested parties, a party files a petition for judicial review as provided in chapter 536.

11 3. If upon judicial review the final decision of the department is reversed or
12 modified, the court in its discretion may award the prevailing party, other than the
13 department, reasonable attorneys' fees and costs. Attorneys' fees and costs owed by the
14 department, if any, shall be payable from employer contributions collected under chapter
15 288.

16 4. A determination of amount of benefits potentially payable under sections 285.400
17 to 285.415 shall not serve as a basis for appeal under this section. However, the
18 determination shall be subject to request by the individual on family leave for
19 redetermination by the department at any time within one year from the date of delivery
20 or mailing of such determination, or any redetermination thereof. A redetermination shall
21 be furnished to the individual in writing and provide the basis for appeal under this
22 section.

23 5. A determination of denial of benefits shall become final in the absence of timely
24 appeal therefrom. The department may redetermine such determinations at any time
25 within one year from delivery or mailing to correct an error in identity, omission of fact,
26 or misapplication of law with respect to the facts.

27 **6. A determination of allowance of benefits shall become final in the absence of**
28 **timely appeal therefrom. The department may redetermine such allowance at any time**
29 **within two years following the application year in which such allowance was made in order**
30 **to recover any benefits for which recovery is provided under this section.**

31 **7. A redetermination may be made at any time:**

32 **(1) To conform to a final court decision applicable to either an initial determination**
33 **or a determination of denial or allowance of benefits;**

34 **(2) In the event of a back pay award or settlement affecting the allowance of**
35 **benefits; or**

36 **(3) In the case of misrepresentation or willful failure to report a material fact.**

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38 **Written notice of any such redetermination shall be promptly given by mail or delivered**
39 **to such interested parties as were notified of the initial determination or determination of**
40 **denial or allowance of benefits and any new interested party or parties who, under such**
41 **rule as the department may adopt, would be an interested party.**

285.413. 1. It shall be unlawful for any person to discharge or in any other manner
2 **discriminate against an individual because the individual has applied for, indicated an**
3 **intent to apply for, or received Missouri family leave benefits.**

4 **2. Any person who violates the provisions of subsection 1 of this section shall be**
5 **liable to any individual employed by such person who is affected by the violation for such**
6 **equitable relief as may be appropriate including employment, reinstatement, or promotion**
7 **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 lost**
10 **to such individual by reason of the violation; or**

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

15 **(2) The interest on the amount described in subdivision (1) of this subsection**
16 **calculated at the prevailing rate; 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 (2)**
19 **of this subsection, except that if a person who has violated subsection 1 of this section**
20 **proves to the satisfaction of the court that the act or omission which violated subsection 1**
21 **of this section was in good faith and that the person had reasonable grounds for believing**

22 that the act or omission was not a violation of subsection 1 of this section, such court may,
23 in the discretion of the court, reduce the amount of the liability to the amount and interest
24 determined under subdivisions (1) and (2) of this subsection, respectively.

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

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

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

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

38 (2) On the filing of a complaint by the department in an action under subsection
39 6 of this section in which a recovery is sought of the damages described in subdivision (1)
40 of subsection 2 of this section owing to an individual by a person liable under subsection
41 2 of this section, unless the action is dismissed without prejudice on motion of the
42 department.

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

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

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

285.414. 1. The department shall develop and implement an outreach program to ensure that individuals who may be eligible to receive Missouri family leave benefits under sections 285.400 to 285.415 are made aware of such benefits. Outreach information shall easily explain eligibility requirements, the claims process, weekly benefit amounts, maximum benefits payable, notice and medical certification requirements, reinstatement and nondiscrimination rights, confidentiality, and the relationship between employment protection, leave from employment, wage replacement benefits, and other laws, collective bargaining agreements, and employer policies.

2. Not later than three years after the effective date of sections 285.400 to 285.415, the state auditor shall submit to the general assembly a report on the Missouri family leave benefits paid for any month during the one-year period beginning on the effective date of sections 285.400 to 285.415. The report shall include the following:

(1) An identification of the total number of applications for such benefits filed, and the average number of days between when an application is received and when a determination is made;

(2) An identification of the total number of requests for review of an initial adverse determination of eligibility for such benefits made, and the average number of days between when such review is requested and when a final determination of eligibility is made; and

(3) An identification of the total number of monthly benefit claim reports for such benefits filed, and the average number of days between the date such report is received and the date on which the initial determination of eligibility with respect to the claim report is made.

285.415. In order to provide funding to implement the provisions of sections 285.400 to 285.410, each employer that is liable for contributions under chapter 288 shall have an additional surcharge of eight-hundredths of one percent added to the employer's contribution rate calculated under section 288.120.

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