

SECOND REGULAR SESSION

HOUSE BILL NO. 2337

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ALDRIDGE.

4612H.01I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 285, RSMo, by adding thereto seven new sections relating to the Missouri parental 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 Parental 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) "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 a person to whom an 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) "Parent", a biological, foster, or adoptive parent;

(5) "Parental leave", leave to bond with a minor child within the first year of the child's birth or placement in connection with foster care or adoption;

(6) "Spouse", a partner to a lawful marriage;

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 (7) "Twelve-month period", with respect to any individual, the three hundred
18 sixty-five consecutive days that begin with the first day the individual first establishes a
19 valid claim for Missouri parental leave benefits;

20 (8) "Valid claim", any claim for Missouri parental leave benefits made in
21 accordance with the provisions of sections 285.400 to 285.415 and any rules and
22 regulations adopted thereunder if the individual claiming benefits is unable to work due
23 to bonding with a minor child during the first year after the birth or placement of the
24 child in connection with foster care or adoption;

25 (9) "Weekly benefit amount", the amount provided under section 288.038.

 285.405. 1. There is hereby established the "Missouri Parental Leave Program"
2 to provide up to fourteen weeks of wage replacement benefits to state employees who
3 take time off work to bond with a minor child within one year of the birth or placement
4 of the child in connection with foster care or adoption. The department shall administer
5 and implement the Missouri parental leave program and the provisions of sections
6 285.400 to 285.415, and shall pay Missouri parental leave benefits as specified in such
7 sections.

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

15 3. The maximum amount payable to an individual during any parental care
16 leave period for Missouri parental leave benefits shall be fourteen times his or her
17 weekly benefit amount, but in no case shall the total amount of benefits payable be more
18 than the total wages paid to the individual during his or her base period, as defined
19 under section 288.030. If the benefit is not a multiple of one dollar, it shall be computed
20 to the next higher multiple of one dollar.

21 4. No more than fourteen weeks of Missouri parental leave benefits shall be paid
22 to an individual within any twelve-month period.

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

29 the claimant, except that such time shall be extended by the department upon a showing
30 of good cause.

31 6. No individual shall be eligible for Missouri parental leave program benefits
32 with respect to any day:

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

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

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

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

44 8. The first payment of Missouri parental leave benefits shall be made to an
45 individual within two weeks after the completed claim is received or the parental leave
46 began, whichever is later, and subsequent payments shall be made biweekly thereafter.

285.410. 1. A claimant shall establish eligibility for each uninterrupted parental
2 leave period by filing a first claim for benefits. For subsequent periods of uninterrupted
3 leave after the period covered by the initial certificate or any preceding continued claim,
4 a claimant shall file a continued claim for those benefits.

5 2. The department shall develop a certificate form for an employee taking leave
6 to bond with a minor child within the first year of the child's birth or placement in
7 connection with foster care or adoption.

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

9 2. The administrative law judge's proposed decision and order shall be final and
10 not subject to further appeal, unless within thirty days after the decision is served on the
11 interested parties, a party files a petition for judicial review as provided under chapter
12 536.

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

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

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

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

33 7. A redetermination may be made at any time:

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

36 (2) In the event of a back pay award or settlement affecting the allowance of
37 benefits; or

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

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40 Written notice of any such redetermination shall be promptly given by mail or delivered
41 to such interested parties as were notified of the initial determination or determination
42 of denial or allowance of benefits and any new interested party or parties who, under
43 such 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
2 manner discriminate against an individual because the individual has applied for,
3 indicated an intent to apply for, or received Missouri parental 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

6 such equitable relief as may be appropriate including, but not limited to, employment,
7 reinstatement, 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 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
13 the individual as a direct result of the violation, such as the cost of providing care, up to
14 a sum equal to sixty calendar days of wages or salary for the individual;

15 (2) The interest on the amount described under 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 under subdivision (1) of this subsection and the interest described under
19 subdivision (2) of this subsection; except that, if a person who has violated subsection 1
20 of this 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 person 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 under
27 subsection 2 of this section may be maintained against any person in any court of
28 competent jurisdiction by any individual for and on behalf of the individual or the
29 individual and 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 under subdivision (1) of subsection 2 of this section to such individual
38 by the person 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 under
41 subdivision (1) of subsection 2 of this section owed to an individual by a person liable

42 under subsection 2 of this section, unless the action is dismissed without prejudice on
43 motion of the department.

44 6. The department may bring an action in any court of competent jurisdiction to
45 recover the damages described under subsection 2 of this section. Any sums recovered
46 by the department shall be held in a special deposit account and shall be paid, on order
47 of 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. The circuit courts shall have jurisdiction, for cause shown, in an action
53 brought by the department to restrain violations of subsection 1 of this section,
54 including the restraint of any withholding of payment of wages, salary, employment
55 benefits, or other compensation, plus interest, found by the court to be due to an
56 individual, or to award such other equitable relief as may be appropriate, including
57 employment, reinstatement, and promotion.

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

10 2. Not later than three years after the effective date of sections 285.400 to
11 285.415, the state auditor shall submit to the general assembly a report on the Missouri
12 parental leave benefits paid for any month during the one-year period beginning on the
13 effective date of sections 285.400 to 285.415. The report shall include the following:

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

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

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

285.415. In order to provide funding to implement the provisions of sections
2 **285.400 to 285.410, each state employer that is liable for contributions under chapter**
3 **288 shall have an additional surcharge of eight-hundredths of one percent added to the**
4 **state employer's contribution rate calculated under section 288.120.**

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