

SECOND REGULAR SESSION

HOUSE BILL NO. 2536

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCCREERY.

6467H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 285, RSMo, by adding thereto eight 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 eight new sections, to be
2 known as sections 285.400, 285.405, 285.410, 285.412, 285.413, 285.414, 285.415, and 285.416,
3 to read as follows:

**285.400. 1. The provisions of sections 285.400 to 285.416 shall be known and may
2 be cited as the "Missouri Earned Family and Medical Leave Act".**

3 2. As used in sections 285.400 to 285.416, the following terms mean:

**4 (1) "Average daily pay", the total wages earned by an employee in the most recent
5 month divided by the number of days worked by the employee in such month;**

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

**9 (3) "Care provider", the family member who is providing the required care for a
10 serious health condition, or the family member who is bonding with the new child;**

**11 (4) "Care recipient", the family member who is receiving care for a serious health
12 condition, or the new child with whom the care provider is bonding;**

**13 (5) "Child", a biological, adopted, or foster son or daughter; a stepson or
14 stepdaughter; a legal ward; a son or daughter of a domestic or civil union partner; or the
15 person to whom the employee stands in loco parentis who is under nineteen years of age**

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.

16 or who is nineteen years of age or older but incapable of self-care because of mental or
17 physical impairment;

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

19 (7) "Employee", any person performing work or service of any kind or character
20 for hire within the state of Missouri;

21 (8) "Employer", any person acting directly or indirectly in the interest of an
22 employer in relation to an employee;

23 (9) "Family member", a child, parent, grandparent, grandchild, sibling, spouse,
24 domestic or civil union partner, or household member;

25 (10) "Family or medical leave", any of the following:

26 (a) Leave to bond with a minor child within the first year of the child's birth or
27 placement in connection with foster care or adoption;

28 (b) Leave to care for a family member who has a serious health condition; or

29 (c) Leave due to an employee's own serious health condition;

30 (11) "Grandchild", a child of the employee's child;

31 (12) "Grandparent", a parent of the employee's parent;

32 (13) "Health care provider", any physician, hospital, health maintenance
33 organization, ambulatory surgical center, long-term care facility including those licensed
34 under chapter 198, dentist, registered or licensed practical nurse, optometrist, podiatrist,
35 pharmacist, chiropractor, professional physical therapist, psychologist,
36 physician-in-training, and any other person or entity that provides health care services
37 under the authority of a license or certificate of this state or any other state or foreign
38 country;

39 (14) "Parent", a biological, foster, or adoptive parent; a parent-in-law; a
40 stepparent; a legal guardian; or other person who stood in loco parentis to the employee
41 when the employee was a child;

42 (15) "Parent-in-law", the parent of a spouse or domestic partner;

43 (16) "Serious health condition", an illness, injury, impairment, or physical or
44 mental condition that involves inpatient care in a hospital, hospice, or residential health
45 care facility or continuing medical treatment or continuing supervision by a health care
46 provider. The term shall include medical attention, services, or counseling for victims of
47 stalking, domestic violence, abuse, or sexual assault, as such terms are defined under
48 section 455.010, or victims of trafficking for the purpose of sexual exploitation as described
49 under section 566.209;

50 (17) "Sibling", a person related to another person by blood, adoption, or affinity
51 through a common legal or biological parent;

52 (18) "Spouse", a partner to a lawful marriage;

53 (19) "Valid claim", any claim for Missouri family leave benefits made in
54 accordance with the provisions of sections 285.400 to 285.416 and any rules and regulations
55 adopted thereunder if the individual claiming benefits is unable to work due to caring for
56 a family member with a serious health condition, due to bonding with a minor child during
57 the first year after the birth or placement of the child in connection with foster care or
58 adoption, or due to his or her own serious health condition.

285.405. 1. There is hereby established the "Missouri Earned Family and Medical
2 Leave Program" to provide up to thirty days of wage replacement benefits to employees
3 who take time off work for family or medical leave. The department shall administer and
4 implement the program and the provisions of sections 285.400 to 285.416 and shall pay
5 Missouri family or medical leave benefits as specified in such sections.

6 2. An employee shall be eligible to receive Missouri earned family or medical leave
7 program benefits equal to one hundred percent of his or her average daily pay for each full
8 day during which he or she has taken family or medical leave.

9 3. The maximum amount of Missouri earned family or medical leave program
10 benefits payable to an employee during any family or medical care leave period shall be
11 thirty times his or her average daily pay. If the benefit is not a multiple of one dollar, it
12 shall be computed to the next higher multiple of one dollar.

13 4. No more than thirty days of Missouri earned family and medical leave benefits
14 shall be paid to an employee within any calendar year.

15 5. An employee shall file a claim for Missouri earned family and medical leave
16 benefits with the department not later than the forty-first consecutive day following the
17 first compensable day with respect to which the claim is made for benefits, which time shall
18 be extended by the department upon a showing of good cause. If a first claim is not
19 complete, the claim form shall be returned to the employee for completion, and it shall be
20 completed and returned not later than the tenth consecutive day after the date it was
21 mailed by the department to the employee; except that, such time shall be extended by the
22 department upon a showing of good cause.

23 6. No employee shall be eligible for Missouri earned family and medical leave
24 program benefits with respect to any day:

25 (1) That he or she has received unemployment compensation benefits under chapter
26 288 or under an unemployment compensation act of any other state or of the federal
27 government;

28 (2) That he or she has received, or is entitled to receive, any other benefits under
29 chapter 287; or

30 **(3) That he or she is entitled to receive state disability insurance benefits under the**
31 **laws of this state or under a disability insurance act of any other state or of the federal**
32 **government.**

33 **7. No employee shall be eligible for Missouri earned family and medical leave**
34 **benefits until such employee has been employed by his or her present employer for one**
35 **year.**

36 **8. An employee who is entitled to leave under the Family and Medical Leave Act**
37 **(FMLA) under 29 U.S.C. Section 2601 et seq. shall take family or medical leave under this**
38 **act concurrent with leave taken under the FMLA.**

39 **9. The first payment of Missouri earned family and medical leave program benefits**
40 **shall be made to an employee within two weeks after the completed claim is received by the**
41 **department or the day the family or medical leave began, whichever is later. Subsequent**
42 **payments shall be made bimonthly.**

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

9 **2. The certificates required under subsection 1 of this section shall be developed by**
10 **the department. In order to establish medical eligibility of the serious health condition of**
11 **the family member that warrants the care of the employee or to establish medical eligibility**
12 **of the serious health condition of the employee, the information on the certificate shall be**
13 **within the physician's or health care provider's knowledge and shall be based on a physical**
14 **examination and documented medical history of the family member or employee. The**
15 **certificate shall contain all of the following:**

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

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

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

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

22 **(5) If applicable, a statement that the serious health condition warrants the**
23 **participation of the employee to provide care for his or her family member.**

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

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

32 **5. Nothing in this section shall be construed to preclude the department from**
33 **requesting additional medical evidence to supplement any claim. Any cost incurred for**
34 **procuring additional medical evidence shall be paid by the employee. The department may**
35 **require that the additional evidence include any or all of the following:**

36 **(1) Identification of diagnoses;**

37 **(2) Identification of symptoms;**

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

41 **(a) The physician or health care provider treating the employee or family member**
42 **of the employee;**

43 **(b) The registrar, authorized medical officer, or other duly authorized official of**
44 **the hospital or health care facility treating the employee or family member of the employee;**
45 **or**

46 **(c) An examining physician or other representative of the department; or**

47 **(4) An affidavit from an employee averring that the employee or such employee's**
48 **spouse gave birth to a child or has adopted a child or received a child in connection with**
49 **foster care.**

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

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 under chapter 536.**

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

16 **4. A determination of the amount of benefits potentially payable under sections**
17 **285.400 to 285.416 shall not serve as a basis for appeal under this section. However, the**
18 **determination shall be subject to request by the employee on family or medical 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 denial of benefits shall become final in the absence of timely appeal therefrom.**
24 **The department may redetermine a denial of benefits at any time within one year from**
25 **delivery or mailing of such denial to correct an error in identity, omission of fact, or**
26 **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 of benefits may be made at any time for any of the following**
32 **reasons:**

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

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

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

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

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

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

8 **(a) 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 **(b) The interest on the amount described under paragraph (a) of this subdivision**
16 **calculated at the prevailing rate; and**

17 **(c) An additional amount as liquidated damages equal to the sum of the amount**
18 **described under paragraph (a) of this subdivision and the interest described under**
19 **paragraph (b) of this subdivision, except that if a person who has violated subsection 1 of**
20 **this section proves to the satisfaction of the court that the act or omission was in good faith**
21 **and that the person had reasonable grounds for believing that the act or omission was not**
22 **a violation, such court may reduce the amount of damages.**

23 **(2) The court may additionally require reasonable attorney's fees, expert witness**
24 **fees, and other court costs to be paid by a defendant.**

25 **3. An action to recover the relief prescribed under subsection 2 of this section may**
26 **be maintained against any person in any court of competent jurisdiction by:**

27 **(1) The employee affected; or**

28 **(2) By any employee on behalf of an employee affected.**

29 **4. The department may bring an action seeking relief on behalf of an employee**
30 **under this section. The right to bring an action provided under subsection 3 of this section**
31 **shall terminate upon the filing of a complaint by the department in an action in which**
32 **injunctive, equitable, or compensatory relief is sought, as provided under subsection 2 of**
33 **this section. If any damages are recovered in such action, such damages shall be held in**
34 **a special deposit account and paid directly to each employee affected.**

35 **5. An action may be brought under this section not later than three years after the**
36 **date of the alleged violation for which the action is brought. An action brought under this**
37 **section shall be considered to be commenced on the date when the complaint is filed.**

2 **285.414. 1. The department shall develop and implement an outreach program to**
ensure that employees who may be eligible to receive Missouri earned family and medical

3 leave benefits under sections 285.400 to 285.416 are made aware of such benefits. Outreach
4 information shall explain, in an easy-to-understand manner, eligibility requirements, the
5 claims process, weekly benefit amounts, maximum benefits payable, notice and medical
6 certification requirements, reinstatement and nondiscrimination rights, confidentiality,
7 and the relationship between employment protection, leave from employment, wage
8 replacement benefits, and other laws, collective bargaining agreements, and employer
9 policies.

10 2. Not later than three years after the effective date of sections 285.400 to 285.416,
11 the state auditor shall submit to the general assembly a report on the Missouri earned
12 family and medical leave benefits paid for any month during the one-year period beginning
13 on the effective date of sections 285.400 to 285.416. The report shall include the following:

14 (1) An identification of the total number of applications for such benefits filed and
15 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 adverse
18 determination of eligibility for such benefits made and the average number of days
19 between when such review is requested and when a final determination of eligibility is
20 made; and

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

285.415. In order to provide funding to implement the provisions of sections
2 285.400 to 285.410, employees shall contribute one quarter of one percent of their average
3 daily pay to the program beginning January 1, 2017. Employers may also contribute funds
4 to the program beginning January 1, 2017 in order to cover all or a percentage of the costs
5 associated with the Missouri earned family and medical leave program. Employers shall
6 not be required to contribute to the program. Employees of employers that contribute one
7 hundred percent of funds to the program necessary to cover all of such employer's
8 employees shall not be required to contribute to the program. In the event that an
9 employer contributes a fraction of the funds required to cover the program costs for their
10 employees, such employees shall only be required to contribute the remaining fraction of
11 the program costs. No employee shall receive benefits from the program until January 1,
12 2018.

285.416. Any rule or portion of a rule, as that term is defined in section 536.010,
2 that is created under the authority delegated in sections 285.400 to 285.415 shall become

3 **effective only if it complies with and is subject to all of the provisions of chapter 536 and,**
4 **if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any**
5 **of the powers vested with the general assembly pursuant to chapter 536 to review, to delay**
6 **the effective date, or to disapprove and annul a rule are subsequently held**
7 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**
8 **after August 28, 2016, shall be invalid and void.**

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