



THE VICTIMS ECONOMIC SECURITY AND SAFETY ACT (VESSA): ILLINOIS EMPLOYER OBLIGATIONS TO EMPLOYEES WHO ARE VICTIMS OF DOMESTIC VIOLENCE

Pugh, Jones & Johnson, P.C. Newsletter

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The Illinois Victims' Economic Security and Safety Act ("VESSA" or the "Act"), 820 ILCS 180/1 *et seq.*, provides unpaid leave and other job protections for victims of domestic and sexual violence and their families. Although over a dozen other states also provide some form of job protected leave to victims of domestic violence, VESSA is by far one of the most comprehensive domestic leave laws and may impose unique compliance burdens on Illinois employers.

A. Covered Employees and Employers

VESSA provides that employees working for an employer with at least fifty (50) employees are entitled to up to twelve (12) workweeks of leave during any 12-month period. For an employer with 15 to 49 employees, employees are entitled to up to eight (8) workweeks of leave during any 12-month period. VESSA applies to all Illinois employees of a covered employer, including individuals participating in welfare to work programs, regardless of whether they work on a full or part-time basis. An employee need not work a specific number of months or hours to be eligible for VESSA leave.

Of particular interest to employers are VESSA's posting requirements: covered employers have a statutory duty to post and maintain a notice, prepared by the Illinois Department of Labor, summarizing the requirements of VESSA and information pertaining to the filing of a charge. The notice must be posted in a conspicuous place on the premises where notices to employees are customarily posted. Significantly, if an employer fails to post the required notice, it may not argue that an employee failed to inform the employer in advance that the employee wanted or was eligible for VESSA leave.

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B. Protected Activities and Employee Benefits

To qualify for VESSA leave, an employee must be either a victim of domestic or sexual violence or have a covered family or household member who is a victim of domestic or sexual violence “whose interests are not adverse to the employee.” An eligible employee may take VESSA leave for any of the enumerated purposes provided under the Act, which include:

1. Seeking medical attention for, or recovery from, physical or psychological injuries caused by domestic or sexual violence to the employee or employee’s family or household member;
2. Obtaining victim services for the employee or 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, including temporary or permanent relocation or other actions to increase the safety of the victim from future domestic or sexual violence; or
5. Seeking legal assistance to ensure the health and safety of the victim, including participating in court proceedings related to the violence.

VESSA permits employers to require employees to report periodically on their status and intention to return to work. The Act also specifies that it does not create a right for an employee to take unpaid leave that exceeds the unpaid leave time permitted by the Family and Medical Leave Act of 1993 (“FMLA”).

Similar to the FMLA, employees may take VESSA leave either on an intermittent or a reduced work schedule basis. VESSA likewise requires that an employee returning from leave be restored to the same or equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employers must also maintain the employee’s health benefits coverage at the same level and under the conditions the coverage would have been provided had the employee not gone on leave.

Borrowing from the Americans with Disabilities Act of 1990 (“ADA”), VESSA also requires employers to make a “reasonable accommodation” to the known limitations resulting from circumstances relating to being a victim of domestic or sexual violence for an otherwise “qualified individual,” unless the employer can demonstrate that the accommodation would impose an undue hardship. VESSA defines a “qualified individual” as an applicant or employee who, but for being a victim of domestic or sexual violence or with a family or household member who is a victim of domestic or sexual violence, can perform the essential functions of the job. A “reasonable accommodation” may include “an adjustment to a job structure, workplace facility, or work requirement, including a transfer, re-assignment, or modified schedule, leave, a changed telephone number or seating assignment, installation of a lock, or implementation of a safety procedure, or assistance in documenting domestic or sexual violence that occurs at the workplace or in work-related settings, in response to actual or threatened domestic or sexual violence.”

Penalties

VESSA broadly prohibits employers from discriminating or retaliating against employees who exercise their rights or oppose unlawful actions under VESSA.



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C. Notice and Certification Requirements

Employees shall provide their employer at least 48 hours' advance notice of the employee's intention to take VESSA leave, unless providing such notice is not practicable. Employers are permitted to require an employee to provide documentation certifying the need to take VESSA leave. If an unscheduled absence occurs, an employer may not take action against the employee if the employee provides certification within "a reasonable period" after the absence. Troublingly, what constitutes a "reasonable" period for an employee to give notice is not defined within the Act. An employee may satisfy the certification requirement by providing a sworn statement of the employee, and upon obtaining, documentation from a victim services organization, attorney, member of the clergy, or medical or other professional from whom the victim sought assistance; a police or court record; or "other corroborating evidence."

D. Anti-Discrimination and Non-Retaliation Provisions

VESSA broadly prohibits employers from discriminating or retaliating against employees who exercise their rights or oppose unlawful actions under VESSA. Notably, VESSA's anti-discrimination and non-retaliation provisions also prevent employers from disciplining or discharging an employee because of the employee's perceived victim status, or because the workplace "is disrupted or threatened by the action of a person whom the individual states has committed or threatened to commit domestic or sexual violence against the individual or the individual's family or household member."

E. Enforcement and Penalties

The Illinois Department of Labor administers and enforces VESSA. VESSA does not authorize a private right of action, but an employee may file a complaint with the Department within three (3) years from the date the alleged violation occurred. Sanctions include backpay "or other compensation denied or lost to such individual by reason of the violation" with interest, equitable relief, and attorney's fees. As written, it is unclear if the statutory phrase "or other compensation denied or lost to such individual by reason of the violation" can be construed to include pain and suffering. An employer's failure to pay damages within 30 days after judgment will result in a penalty of 1% per calendar day for each day of delay.

Please contact us if you would like additional information on VESSA and best practice compliance measures.